

Decision **DRAFT DECISION OF ALJ MATTSON** (Mailed 9/30/2003)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Adopting Rules To  
Account For The Consideration Received By  
Regulated California Electric And Natural Gas  
Utilities Under A Settlement With El Paso Natural  
Gas Company, et al.

Rulemaking 03-07-008  
(Filed July 10, 2003)

**OPINION**  
**REGARDING TREATMENT OF CONSIDERATION**  
**RECEIVED PURSUANT TO EL PASO SETTLEMENT**

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**OPINION  
REGARDING TREATMENT OF CONSIDERATION  
RECEIVED PURSUANT TO EL PASO SETTLEMENT**

**1. Summary**

Energy customers in California and three western states will receive an estimated \$1.5 billion (nominal value) as a result of settling litigation with El Paso Natural Gas Company. The litigation involves high natural gas and electricity prices during the period March 1, 2000 through May 31, 2001. This proceeding addresses the accounting and ratemaking treatment of the portion of the settlement proceeds that will be paid to entities, utilities and ratepayers subject to the jurisdiction of this Commission. The adopted accounting treatment and rules are stated in Attachment A. This proceeding is closed.

**2. Background**

**2.1. Litigation and Settlement**

El Paso Natural Gas Company, its parent corporation and its affiliates (El Paso) have been subject to numerous investigations, complaints and litigation regarding extremely high natural gas and electricity prices in California and several Western states during the 15-month period from March 1, 2000 through May 31, 2001. El Paso's involvement in these high prices, for example, was an issue in a complaint proceeding brought by this Commission before the Federal Energy Regulatory Commission (FERC) in Docket Nos. RP00-241-000, *et al.* It was also the focus of investigations by the Attorney General (AG) of California and the AGs of Nevada, Washington, and Oregon; 15 separate plaintiffs' lawsuits in San Diego Superior Court; and federal court lawsuits brought by the California AG, Pacific Gas and Electric Company (PG&E), and Southern California Edison Company (SCE).

After years of controversy, El Paso and parties have elected to settle these disputes. The “Settlement” consists of:

- a. A settlement filed at FERC on June 4, 2003 (providing structural relief to California shippers utilizing the El Paso system);
- b. A Master Settlement Agreement (MSA), an Allocation Agreement, and separate settlement agreements, filed in San Diego Superior Court on June 26, 2003 (providing most of the consideration payable by El Paso to resolve these disputes);<sup>1</sup> and
- c. Stipulations for Judgment which will be filed in the United States District Court for the Central District of California (which will also provide structural relief).

The Settlement is between the Governor of the State of California; this Commission; the California AG; the California Department of Water Resources (CDWR); PG&E; SCE; the AGs of Nevada, Oregon, and Washington; law firms representing plaintiffs in 15 lawsuits; and El Paso. The Settlement also involves the California Electricity Oversight Board (CEOB) by its proposed resolution of a dispute between the CEOB, the Commission and El Paso concerning El Paso’s long-term wholesale power contracts with CDWR. The final effectiveness of the MSA is subject to completion of a variety of preconditions.<sup>2</sup>

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<sup>1</sup> The Settlement also includes other implementing documents, such as a Designated Representative Agreement and an Escrow Agreement.

<sup>2</sup> The effective date is defined as the date when all conditions precedent have been satisfied, including, *inter alia* (a) entry of a judgment by the San Diego Superior Court approving the class action settlement, (b) approval of the settlement by the FERC and dismissal of various FERC proceedings against El Paso, (c) Bankruptcy Court approval

*Footnote continued on next page*

In the Settlement, El Paso has agreed to provide an estimated \$1.5 billion (nominal value) in consideration for resolving all of this litigation. The approximately \$1.5 billion is composed of:

1. \$900 million in cash at \$45 million per year for 20 years (15 years if El Paso achieves an investment grade credit rating) with a prepayment option for El Paso;
2. \$125 million reduction in El Paso's long-term contracts with CDWR;
3. \$352 million in up front cash; and
4. Proceeds from the sale of more than 26 million shares of El Paso Corporation stock (estimated to be worth about \$227 million at the time the MSA was executed, or about \$8.60 per share).

Under the Allocation Agreement, parties have agreed to hundreds of millions of dollars of consideration payable to persons and entities beyond the ratemaking jurisdiction of this Commission (e.g., to the AGs of Nevada, Oregon, and Washington; municipalities; noncore gas customers). Parties have also agreed to consideration of an estimated \$1 billion (nominal value) that will ultimately benefit the California public utilities and ratepayers under our jurisdiction. Approximately \$600 million of the estimated \$1 billion will be allocated to gas and electric utilities directly under our jurisdiction. Further, about \$425 million will be payable to CDWR, which CDWR has committed to

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of the Settlement as to PG&E, and (d) entry of stipulated judgments in federal district court encompassing the structural relief agreed to by parties. (MSA at paragraphs 3.1, 3.2.)

use to reduce the CDWR revenue requirement paid by ratepayers under our jurisdiction.

The estimated consideration of \$1.5 billion depends upon proceeds from the sale of El Paso stock, which may generate more or less proceeds than now estimated. Moreover, an iterative process involving municipalities' claims and the payment of attorneys' fees makes the precise residual amount of consideration for the public utilities' ratepayers unknown at this time. Nonetheless, a reasonable estimate for the Commission's jurisdictional allocations to provide a context for the application of the ratemaking and accounting procedures is as stated in the Order Instituting Rulemaking (OIR):

**TABLE 1**  
**ESTIMATED ALLOCATIONS**  
**UNDER COMMISSION JURISDICTION**

<b>Line No.</b>	<b>Consideration Affecting the Rates of Commission Jurisdictional Customer Groups</b>	<b>Estimated Allocation (Nominal Dollars in Millions)</b>
1	<b>Electric</b>	
2	Reduction of CDWR Revenue Requirements	\$ 425
3	PG&E Electric Customers	\$ 210
4	SCE Electric Customers	\$ 195
5	SDG&E Electric Customers	<u>\$ 60</u>
6	<b>Subtotal Electric</b>	<b>\$ 890</b>
7	<b>Gas</b>	
8	PG&E Core Gas Customers	\$ 75
9	SoCalGas Core Gas Customers	\$ 36
10	SDG&E Core Gas Customers	\$ 29
11	Southwest Core Gas Customers	<u>\$ 5</u>
12	<b>Subtotal Gas</b>	<b>\$ 145</b>

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**Total Electric and Gas****\$ 1,035**

The specific agreements that comprise the Settlement, including issues regarding the substantive merits of the Settlement, are before FERC, San Diego Superior Court, and the United States District Court for the Central District of California. The ratemaking treatment for utilities under our jurisdiction, and the fair allocation of the proceeds to ratepayers, is before this Commission.

## **2.2. OIR and Scoping Memo**

We instituted this rulemaking to consider proposals for accounting and ratemaking mechanisms to equitably distribute the proceeds from the Settlement to those under our jurisdiction. The OIR included our proposals, and asked for comments, along with objections, if any, to the preliminary categorization, lack of evidentiary hearing, or proposed schedule. No objections were filed.

By Scoping Memo dated July 30, 2003, the issues were identified, the final schedule adopted, and other procedural matters addressed. Comments and alternative proposals were timely filed and served on August 4, 2003, by PG&E, SCE, jointly by San Diego Gas & Electric Company and Southern California Gas Company (SDG&E/SoCalGas), Southwest Gas Corporation (Southwest), The Utility Reform Network (TURN), representatives of certain classes of California electric utility ratepayers (Electric Classes), jointly by School Project for Utility Rate Reduction and the Association of Bay Area Governments Publicly Owned Energy Resources (SPURR/ABAG POWER), and jointly by William P. Bower and Thomas L. French (Bower & French). Reply comments were timely filed on August 14, 2003, by PG&E, SCE, SDG&E/SoCalGas, Electric Classes, SPURR/ABAG POWER, Bower & French, and the Commission's Office of

Ratepayer Advocates. On August 14, 2003, CDWR served a memorandum to assist the Commission with CDWR-related issues.

By Ruling dated August 27, 2003, additional ratemaking treatment was proposed for a limited group of six PG&E customers not otherwise covered in the OIR. Comments were filed and served on September 3, 2003, by PG&E. Reply comments were filed and served on September 8, 2003, by the City of Palo Alto (Palo Alto).

### **3. Discussion**

We discuss the issues in the same order presented in the OIR:

1. CDWR Revenue Requirement
2. Electric Utility Issues
3. Gas Utility Issues
4. Incentive Mechanisms
5. Income Taxes

We conclude by discussing limited other issues raised by parties.

#### **3.1. CDWR Revenue Requirement**

CDWR procured electricity on behalf of California's electric utilities during the energy crisis in 2000 and 2001 when utilities were unable to do so themselves. CDWR issued in excess of \$10 billion in bonds to finance those purchases. A series of statutes, decisions and agreements now govern recovery of CDWR's costs from utilities and ratepayers of utilities under our jurisdiction.<sup>3</sup> A portion of the Settlement (estimated to be \$425 million in nominal dollars) will accrue to

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<sup>3</sup> See, for example, Decision (D.) 02-02-051 regarding a Rate Agreement between CDWR and the Commission.



the benefit of CDWR, and distribution of that Settlement consideration to ratepayers of utilities under our jurisdiction is before us.

Our initial proposal was to continue to use already adopted procedures for treatment of CDWR's revenue requirement, including any reductions from El Paso consideration. (OIR, *mimeo.*, page 10.) Parties make several recommendations on ratemaking treatment. After careful consideration, we are not persuaded to adopt any changes for the reasons explained below.

PG&E and SCE propose that we use the percentages that result from the methodology adopted for allocation of CDWR's statewide revenue requirement in effect for the 2000 and 2001 period, since the settlement essentially addresses allegations and claims arising from activities during this period.<sup>4</sup> PG&E recommends incorporating these results into the CDWR revenue requirement beginning immediately with the pending CDWR revenue requirement, with incorporations into future CDWR revenue requirements as those benefits are received. SDG&E/SoCalGas propose that the allocation to utilities be determined in the 2001-02 CDWR true-up proceeding using an allocation of Settlement proceeds based on the theory of damages occurring in the 15-month period from March 1, 2000 through May 31, 2001.

We agree with Bower & French, TURN, and CDWR, however, that the allocation percentages should not necessarily remain fixed based on those in effect during the 2000-01 period. Rather, the allocations should change along

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<sup>4</sup> PG&E and SCE cite the methodology in D.02-02-052 (as modified by D.02-03-003 and D.02-03-062), resulting in percentages of 48.3% for PG&E, 38.2% for SCE and 13.55% for SDG&E with respect to CDWR's 2001-02 revenue requirement.

with changes to the allocation of the CDWR revenue requirement over time to the extent changes are determined reasonable. If no changes are found reasonable, the allocation will remain fixed. As TURN correctly asserts, the refunds should be treated as a reduction in revenue requirement allocated based on the principles in place at the time of the refund without seeking to perform any sort of “true-up” of the allocation in place at the time the overcharges occurred. A “true-up” would add unnecessary and unreasonable complexity, and conflict with updated allocations, if any. Our adopted method is simpler, and consistent with our preference for a minimalist approach.<sup>5</sup>

Electric Classes recommend that CDWR Settlement consideration be used to retire California state bonds that were issued to cover CDWR’s short-term power purchases in 2001. Electric Classes say they prefer bond retirements due to a concern whether both bundled and direct access (DA) customers will benefit equally from reductions in CDWR’s revenue requirement due to the complex methodology adopted by the Commission in D.02-11-022 for calculating the DA Cost Responsibility Surcharge (DA CRS). Electric Classes also argue that bond retirement is the most appropriate use of Settlement proceeds since CDWR’s El Paso-related damages are attributable mostly to inflated wholesale spot prices from January through June 2001, and are the same costs that the state

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<sup>5</sup> We stated our preference for a minimalist approach in the OIR. (OIR, *mimeo.*, page 7.) By minimalist approach we mean the use of existing accounting practices and ratemaking treatments in place at any particular time over the up to 20 years that El Paso consideration might be distributed. We also mean, to the extent reasonable, the avoidance of complex and controversial additional accounting and ratemaking adjustments that may lead to further litigation and use of limited resources of parties and the Commission.

is recovering through the bonds. The only exception is the \$125 million reduction in El Paso long-term contract costs under the Settlement that, according to Electric Classes, should flow through CDWR's long-term contract revenue requirement. Finally, independent of the bond issue, Electric Classes observe that if El Paso refunds are paid out over a full 20 years, there is some chance that refunds will be received after all CDWR obligations have been paid. In this case, Electric Classes recommend that CDWR's portion of the refund flow through to electric utilities with an allocation determined by the Commission at that time.

We decline to modify existing agreements for the reasons stated in CDWR's memorandum submitted at the time of reply comments. As CDWR says, the Allocation Agreement among settling parties governs the consideration to be received under the Settlement, and our Rate Agreement with CDWR governs the Commission's establishment of Bond Charges and Power Charges. The Allocation Agreement is not before this Commission, and we are not persuaded that we should consider amendments to the Rate Agreement.

Moreover, it is beyond the scope of this proceeding to determine whether or not CDWR should retire its bonds. Nonetheless, CDWR will reduce its revenue requirement (either through bond charges or power charges, or some combination of both) by the amount of the El Paso consideration, as CDWR has committed to do in the Settlement. The Commission will then implement the pass through to retail customers of CDWR's reduction in revenue requirement as part of our periodic proceedings to implement revisions to the CDWR revenue requirement.

Finally, TURN recommends that continuous DA customers not receive any portion of the CDWR refunds because, according to TURN, continuous

DA customers do not pay the CDWR Power Charge. We agree. Continuous DA customers (e.g., continuous before and after February 1, 2001) were not assessed CDWR bond or power charges. (D.02-11-022.) As a result, they are not due any portion of the El Paso consideration payable to CDWR which we would otherwise pass through to ratepayers.

### **3.2. Electric Utility Issues**

#### **3.2.1. ERRA for SCE and SDG&E**

Both SCE and SDG&E (electric operations) have an Energy Resource Recovery Account (ERRA) for procurement costs. As proposed in the OIR, Settlement revenues would be credited to the ERRA to expeditiously reflect Settlement payments as a reduction in procurement costs. (OIR, *mimeo.*, page 12.)

SCE and TURN agree with our proposed treatment. No party disagrees with this approach for SCE. We adopt this method for SCE.

SDG&E also agrees in principle but recommends a variation, which we adopt for SDG&E. SDG&E recommends that the Commission first apply 70% of SDG&E's share of these settlement revenues to the Assembly Bill (AB) 265 subaccount of SDG&E's Transition Cost Balancing Account (TCBA).<sup>6</sup> This would be for the purpose of focusing the reduction on the AB 265<sup>7</sup>

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<sup>6</sup> The TCBA contains two subaccounts, one account allocated to small (AB 265) customers, which includes the AB 265 undercollection, and the other account allocated to large customers, all of which are not subject to AB 265.

<sup>7</sup> On September 7, 2002, we required SDG&E to implement various portions of AB 265. (D.00-09-040.) Among other things, we required SDG&E to place a 6.5 cent per kilowatt-hour (kWh) ceiling on the electric commodity rate retroactive to June 1,

*Footnote continued on next page*

undercollection. SDG&E proposes that the remaining 30% of SDG&E's share be allocated to the large customer subaccount of the ERRA (ABX1 43). Upon payment in full of the undercollection in SDG&E's AB 265 subaccount, SDG&E says that the balance of all such settlement revenues would then be applied to SDG&E's ERRA as proposed in the OIR.

In support, SDG&E says the Commission denied SDG&E's request to establish a surcharge to recover the AB 265 undercollection and instead instructed SDG&E to eliminate the undercollection by viable options other than a rate increase, citing D.02-12-064. In compliance, SDG&E states that it filed an advice letter (AL 1469-E) outlining a plan to eliminate the undercollection without a rate increase. As part of this plan, SDG&E says it included a proposal to transfer the overcollections in certain balancing accounts to reduce the AB 265 undercollection. In addition, SDG&E says AL 1469-E (approved by the Commission on February 25, 2003) stated that SDG&E would continue to seek opportunities to apply refunds due ratepayers in both FERC and Commission proceedings via a reduction in the AB 265 undercollection.<sup>8</sup>

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2000 for specified SDG&E customer classes (primarily residential plus small commercial and lighting customers). We further directed SDG&E to establish an account to record the difference between the 6.5 cent/kWh rate ceiling and the actual commodity rate. These expenses were tracked to the Energy Rate Ceiling Revenue Shortfall Account, later renamed the Energy Revenue Shortfall Account, a subaccount to the TCBA. The 70% allocation is consistent with the treatment adopted in D.02-12-064 regarding the AB 265 surcharge.

<sup>8</sup> SDG&E reports that the undercollection balance in the TCBA is \$174 million as of June 30, 2003.

Consistent with this direction, we have approved several SDG&E proposals to utilize overcollections and refunds from other regulatory accounts to apply toward the AB 265 undercollection. For example, we granted SDG&E's request to proportionately apply 70% of the energy overpayment refunds from CDWR toward reducing the AB 265 undercollection. (Resolution E-3813, issued June 19, 2003.) We approved SDG&E's request to transfer a \$21 million refund from the Transmission Revenue Balancing Account Adjustment to the TCBA, where it can be proportionately applied toward the AB 265 undercollection. (AL 1503-E, July 10, 2003.) We also granted SDG&E's request to transfer 2002 year-end overcollections in the Tree Trimming Balancing Account and the Rate Reduction Bond Memorandum Account to directly reduce the AB 265 undercollection. (Resolution E-3798, January 30, 2003.)

We agree with SDG&E that crediting the Settlement revenues to the TCBA first in the manner proposed by SDG&E is consistent with the goal of eliminating SDG&E's AB 265 undercollection. SDG&E's recommendation is also consistent with the minimalist approach recommended in the OIR, utilizes the utility's existing accounting mechanisms to the fullest extent possible, and provides a better alternative to equitably account for the settlement consideration allocated to SDG&E's electric customers.

Only Bower & French disagree, contending that SDG&E remains a co-defendant in class action litigation against El Paso and may be found jointly and severally liable for higher prices paid by ratepayers. Bower & French argue that SDG&E "should not be allowed to hijack any part of the settlement proceeds." (Reply Comments, page 3.)

We are not persuaded that allocating the proceeds as recommended by SDG&E "hijacks" any part of the settlement. The El Paso consideration received

by SDG&E for its electric ratepayers will be credited against costs that would otherwise be paid by those ratepayers in the form of higher rates.<sup>9</sup> Bower & French fail to explain how the adopted allocation would hinder a court from ordering any relief it believes necessary. Similarly, the adopted allocation does not prevent the Commission from ordering any other future equitable allocations or ratemaking treatment, if and as necessary, based on any court action, or other needs identified and decided by the Commission. As a result, SDG&E's proposed allocation meets previously stated Commission objectives, and we adopt it.

### 3.2.2. PG&E

We proposed in the OIR that PG&E place El Paso Settlement proceeds into an interest bearing memorandum account until two matters are resolved:

(1) PG&E's emergence from bankruptcy (Case No. 01-30928-DM in United States Bankruptcy Court for the Northern District of California, with the ratemaking implications to be decided by the Commission in Investigation (I.) 02-04-026), and (2) the pending phase of the rate stabilization proceeding wherein we will "determine the extent and disposition of stranded costs left unrecovered"

(D.02-01-001 granting rehearing of D.01-03-082 in Application

(A.) 00-11-038 et al., *mimeo.*, page 25). As proposed, the memorandum account balance would be used as a credit or offset to previously unrecovered costs ultimately to be paid by ratepayers. (OIR, *mimeo.*, pages 12-14.) We adopt this approach with further explanation below.

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<sup>9</sup> SDG&E will similarly apply the El Paso consideration it receives for its natural gas ratepayers against costs that would otherwise be paid by those ratepayers.

PG&E essentially agrees with this approach, pointing out that the proposed bankruptcy Settlement Agreement (SA) between the Commission staff and PG&E establishes a Regulatory Asset to be amortized over nine years beginning January 1, 2004. PG&E also notes that the proposed SA specifically provides net after-tax consideration from the El Paso Settlement is to be used to reduce the outstanding balance of the Regulatory Asset dollar for dollar. PG&E adds, however, that once the Regulatory Asset is fully amortized, further benefits of the El Paso Settlement, if any, should be given to ratepayers through the authorized electric balancing account(s) in effect at that time.



We cannot decide issues here that concern the proposed bankruptcy SA pending in another proceeding. For this reason, we require that PG&E establish an interest bearing memorandum account where it shall place the proceeds of the El Paso Settlement consideration to be held for PG&E's electric customers consistent with our initial proposal. We further require that PG&E credit these proceeds to benefit its electric ratepayers for costs its ratepayers will otherwise have to pay once determined in either the PG&E bankruptcy proceeding (I.02-04-026) or the rate stabilization proceeding (A.00-11-038 et al.).

Electric Classes are concerned that this approach will unacceptably delay the return of Settlement money to PG&E ratepayers. Electric Classes recommend that the Commission return El Paso proceeds to ratepayers once either of the proceedings is resolved and a final determination is made that PG&E ratepayer obligations for past costs exceed expected Settlement proceeds. Further, Electric Classes recommend that if both the bankruptcy and the rate stabilization proceedings remain unresolved more than nine months after the effective date of the Settlement, the Commission flow through the El Paso refunds directly to ratepayers without additional delay as an equal percentage reduction in the rate surcharges implemented in June 2001. Any discrepancies between this distribution and the allocation the Commission ultimately adopts in conjunction with the final resolution of the bankruptcy can be trued-up, according to Electric Classes, in the allocation of subsequent El Paso refunds after the bankruptcy is resolved.

We decline to adopt the recommendation of Electric Classes. Through application of the memorandum account, we ensure that PG&E rates will be reduced below what they would otherwise be without the El Paso consideration, but we must do so in a coordinated process that properly treats many complex

interrelated matters. That is best done through the bankruptcy or rate stabilization proceedings (I.02-04-026 and A.00-11-038 et al.) along with the use of subsequent electric balancing account(s), if required. Once we determine the costs PG&E is entitled to recover, we will be able to ascertain the best way to credit the El Paso consideration to these costs so that it maximizes the benefits to PG&E ratepayers. Moreover, we are committed to resolving the bankruptcy and rate stabilization proceedings as soon as reasonably possible, and expect to do so before receipt of money under the MSA, to the extent feasible.

If El Paso elects the prepayment option, the adopted approach will benefit ratepayers as soon as reasonably possible with the least additional complexity. If the El Paso consideration is paid over 20 years, we will ensure through the appropriate proceeding(s) that a mechanism is adopted to distribute the remainder of the proceeds, as necessary and appropriate.

### **3.2.3. Direct Access Customers**

#### **3.2.3.1. Background and Proposal**

The Settlement addresses the damages to ratepayers from extremely high natural gas prices, which also contributed to extremely high electric prices, for the 15 months from March 1, 2000 through May 31, 2001. During this period, a number of customers (and a portion of utilities' system load) did not purchase electricity from utilities but were served by several alternative energy service providers. These customers are called DA customers, and they received a credit on their bill for the utility's wholesale procurement program cost "savings." These savings were the utility's avoided costs (avoided because the utility did not purchase power to serve these customers). The savings were therefore subtracted from the bill that was otherwise applicable under the utilities' tariffs for full-service customers.

For SCE, the DA CRS Tracking Account (as more fully described in SCE's tariff) tracks the difference between: (1) recorded DA CRS Revenues, and (2) authorized DA CRS Obligations. (D.02-11-022 and D.02-12-045.) The authorized DA CRS-related Obligations include the CDWR Bond Charge, the CDWR Power Charge, ongoing Competition Transition Charges (CTC), and its Historical Procurement Charge. (D.02-11-022.)

SDG&E's tariff description is slightly different. The purpose of SDG&E's DA CRS Memorandum Account<sup>10</sup> is to track the shortfall in CDWR Power Charge payments and CTC resulting from the establishment of the interim 2.7 cent/kWh DA CRS rate cap on applicable DA customers pursuant to Commission D.02-11-022 and D.02-12-045. To the extent DA obligations for the sum of the DWR Bond Charge, DWR Power Charge and CTC are not fully recovered from the 2.7 cent/kWh rate cap, the DA CRS Memorandum Account tracks the Power Charge and CTC under-collections. Any shortfall resulting from the DWR Bond Charge is recorded in a separate Bond Charge Balancing Account.

To the extent that the DA customers of the utilities must help pay for the utilities' previously unrecovered costs, the DA customers, just like the full-service customers, should receive as a credit or offset a fair share of the consideration received by the California electric utilities under the Settlement. Therefore, we proposed in the OIR that, for SCE and SDG&E, the proceeds be allocated when paid under the Settlement to the ERRRA for full service customers,

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<sup>10</sup> There is no substantive difference between the "tracking" account title used by SCE and a "memorandum" account title used by SDG&E.

and the DA CRS tracking or memorandum account for DA customers, based on the relative percentage of full-service and DA to total kWh system deliveries in the preceding 12 months prior to their first receipt of consideration under the MSA. For PG&E, we proposed that the El Paso consideration be placed in a memorandum account for the future benefit of PG&E's ratepayers once the Commission determines the extent to which the full-service ratepayers and DA customers will pay PG&E's previously unrecovered costs. (OIR, *mimeo.*, pages 14-15.)

### **3.2.3.2. Factual Issues**

All parties commenting on this issue agree that use of the DA CRS accounts is the appropriate accounting mechanism for DA customers' share of any refund, but that the extent to which DA customers should share in any refund involves factual issues that may differ among utilities. Other than allocations (which we address below), parties do not convincingly identify any factual issues that would require continued examination in future proceedings. As a result, we decline to adopt a rule that contemplates continued litigation of these matters. We adopt the initial proposal for SCE and SDG&E (with the portion to full service customers split as described above 70/30). We adopt an interest bearing memorandum account for PG&E.

### **3.2.3.3. Allocation Based On First Receipt**

SCE supports the proposal as made in the OIR to base the allocation on the relative percentage of full-service and DA load to total system deliveries in the preceding 12 months prior to their first receipt of consideration under the MSA. SDG&E, Electric Classes and TURN, however, contend that migration may occur between bundled and DA customers, and the percentage allocation should be

updated with each receipt of consideration under the MSA. We are not persuaded to perform constant updates.

As SCE says, the purpose of the MSA was to reimburse electric customers for damages resulting from El Paso's behavior when the damages accrued. A reallocation at the time of each refund would be a true-up based on current DA load, and would conflict with the original intent. The proposal in the OIR comes closest to compensating those who were damaged. Moreover, it is a stable and simple method, and is consistent with our preference for a minimalist approach.

### **3.3. Gas Utility Issues**

#### **3.3.1. PGA**

Each natural gas utility has a Purchased Gas Account (PGA). The PGA records costs (associated with gas purchased for the utility's Gas Supply Portfolio—i.e., the inventories of gas purchased for resale) and revenues (from the sale of that gas).

We proposed in the OIR that Settlement revenues attributable to core gas customers be credited to the PGA in order to expeditiously reflect the value of the Settlement as a reduction to core gas procurement costs. (OIR, *mimeo.*, page 16.) All parties essentially agree with this approach, which we adopt with slight modification.

PG&E proposes that “up-front” cash be provided to core aggregation and former core subscription customers. For the reasons explained below, we adopt PG&E's “up-front” payment approach (modified to base payments on a net present value) for PG&E, SDG&E, and SoCalGas. As a result, we similarly adopt PG&E's proposal that the first payment under the MSA that would otherwise be

recorded to each utility's PGA be recorded net of the limited amounts allocated up-front to some few customers.

Southwest proposes another variation based on its own accounts, which we adopt for Southwest. Southwest proposes that money allocated to its core gas customers be credited as received first to its core fixed cost adjustment mechanism (CFCAM)<sup>11</sup> until the CFCAM balance is zero. The remainder would then be applied to the PGA balance. No party opposes Southwest's proposal.

We adopt Southwest's unopposed proposal. As Southwest correctly states, crediting either account will accomplish the purpose of reflecting the value of the Settlement as a reduction to the costs of procuring natural gas for its customers. According to Southwest, it currently has an under-collection in its CFCAM. Applying Settlement proceeds first to the CFCAM (until its balance is zero) will mitigate the rate impact of recovering the undercollected CFCAM balance. Once that balance is zero, Southwest should apply the remainder to the PGA balance. Just as we adopt for the other gas utilities above, the first payment under the MSA that would otherwise be recorded to Southwest's CFCAM should be net of the limited amounts allocated up-front to some few customers.

### **3.3.2. Core-Elect and Core-Subscription Customers**

#### **3.3.2.1. Background and Proposal**

During the March 1, 2000 through May 31, 2001 timeframe, some noncore gas customers were served by the utilities' core gas portfolios even though these customers could have otherwise procured their own gas. These noncore customers were called "Core Elect" and "Core-Subscription" customers. To the

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<sup>11</sup> Southwest explains that it uses its PGA to record the commodity portion of costs, and its CFCAM to record the pipeline demand charges and other fixed costs. (Southwest Comments at page 4.)

extent that these customers are still served by the gas utilities' core portfolios, they will receive the benefit of the El Paso consideration by the credit to the gas utilities' PGA (or CFCAM for Southwest). However, during or subsequent to the winter of 2000/2001, some of the noncore customers, who had previously purchased natural gas from the utilities' core portfolios, may have purchased their own natural gas supplies either by choice or because the core subscription option was eliminated before the highest price-spikes were incurred.

We proposed in the OIR that these customers not receive a share of the California natural gas utilities' consideration under the Settlement to the extent they are eligible to submit claims under the Settlement to seek consideration in the Superior Court's claims process for noncore customers. On the other hand, we proposed that noncore customers, who were previously core-elect or core subscription customers during the entire above-mentioned time period but are no longer purchasing their gas from the utilities, be able to submit a request for a refund or credit with the utilities based upon their purchases from the utilities' core portfolios (in therms) during the period at issue, as shown on their bills. We said that the Settlement consideration could be allocated to a fractional-cent per therm for all throughput, with the refund rate treatment as discussed regarding core aggregation. Also, because we proposed to account for the Settlement proceeds allocated to gas customers by initially recording the revenues in the PGA, we further proposed that any refunds or credits by the utilities to these noncore customers should then be booked to the PGA as an expense (which has the effect of reducing the settlement revenues attributable to the remaining core customers). (OIR, *mimeo.*, page 17.)



### **3.3.2.2. Refund Plan**

SDG&E, SoCalGas and TURN agree with the Commission's proposal. PG&E also agrees, but suggests it develop its own refund plan. We adopt our initial proposal, but with PG&E's variation regarding the refund plan for all four gas utilities.

That is, PG&E proposes that it file its own refund plan in lieu of requiring its customers to file a request for a refund. In support, PG&E says its core subscription service ended February 28, 2001, pursuant to the Gas Accord decision, citing D.97-08-055. PG&E proposes that it refund a pro rata share of the Settlement consideration to current PG&E noncore customers who were core subscription customers for some period between March 1, 2000 and February 28, 2001. Once the refund is complete, PG&E says any remaining balance will be transferred to the PGA, consistent with the proposed treatment of the Settlement consideration for bundled core gas customers.

We adopt PG&E's proposal, and direct that PG&E develop and propose a refund plan through an Advice Letter. We similarly require each gas utility with such customers to file an Advice Letter with a proposed refund plan that does not require the customer to first submit a request. As Bower & French say, requiring these customers to apply for a refund to obtain their share of Settlement consideration would entail administrative costs disproportionate to the amount of money to be allocated to this group. We are confident that each utility can develop and propose a reasonable and efficient refund plan that will mitigate the burden on these customers.

Bower & French, however, disagree with PG&E's proposal that these customers receive the full amount of the refund "up-front," while core ratepayers only receive the benefits over time. This concern can be reasonably addressed by

requiring that the refund plan reflect the time value of money by use of a net present value. That is, the refund plan should calculate the “up-front” payment based upon a net present value of a reasonable forecast of potential payments using a reasonable proposed discount rate. Each utility’s proposed refund plan should include this calculation.<sup>12</sup>

With this net present value adjustment, we adopt PG&E’s proposal. This will promote administrative feasibility. PG&E estimates the total refund amount to be about \$0.9 million. (PG&E Comments, page 9.) Spreading an estimated \$0.9 million over a period of up to 20 years for many noncore customers would otherwise add a level of administrative cost and complexity that is unreasonable, while paying the refund now discounted by a net present value promotes efficiency and equity. As a result, each of the four natural gas utilities should administer the refund to these customers in the near term, with the remaining balance, if any, transferred to the PGA.

Bower & French also disagree with what they characterize as the position of the Commission, SDG&E and SoCalGas that core-elect and core-subscription customers who are eligible to participate in the San Diego Superior Court claims process for noncore gas customers not also receive settlement benefits for the time they were core-elect or core-subscription customers. According to Bower & French, these customers will not be eligible to receive compensation in the claims

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<sup>12</sup> If there is any reasonable chance of dispute about the likely forecast of the payment stream, each utility’s proposed Advice Letter should test the sensitivity of the forecast by including at least two forecast payment streams to which is applied the same discount rate.

process for gas purchases while they were core-elect or core-subscription, and should be eligible to participate in the Commission's refund plan.

We agree. That is, to the extent these customers are eligible to submit claims in Superior Court, we expect them to do so, and they will not be eligible for a duplicative refund for the same time period from the utility through the Commission-adopted refund process. However, to the extent they are ineligible to submit claims in Superior Court--including for some portion of the 15-month period--they should be eligible for a pro rata share of the refund paid by the utility.

### **3.3.3. Core Aggregation Customers**

#### **3.3.3.1. Background and Proposal**

Some gas consumers were part of the core aggregation program during the March 1, 2000 through May 31, 2001 timeframe. Those core customers, who were then purchasing natural gas from core aggregators but who now purchase natural gas from gas utilities, will receive the benefit of El Paso consideration through amounts utilities credit to their PGA (including the CFCAM for Southwest).

On the other hand, there are certain core customers, who purchased natural gas from core aggregators between March 1, 2000 and May 31, 2001, and who still purchase natural gas from core aggregators. This latter group would not receive the benefit via the credit in the utilities' PGA (or CFCAM). Core aggregation customers, however, pay a core aggregation transportation charge that gas utilities charge for the transportation of gas provided by the core aggregators.

In the OIR we proposed that each natural gas utility with core aggregators transporting natural gas on the utility's facilities book a proportional share of the

Settlement consideration attributable to core aggregation customers in a new memorandum account, called the El Paso Settlement Memorandum Account (EPSMA). The EPSMA balance would then be used, at the time of the next appropriate ratemaking proceeding, to partially offset the utility's allocated revenue requirement recoverable through the authorized core aggregation transportation rate. We proposed that these customers receive a proportional share of their California natural gas utility's Settlement consideration based upon their class's share of the utility's total system natural gas throughput, excluding noncore volumes, for the 12 months immediately prior to the time that the utility first receives the consideration. Further, we proposed that the Settlement consideration be allocated to a fractional-cent per therm for all deliveries, excluding noncore, to all customers served by respondents, with the core aggregators' share recorded in the EPSMA until it is credited against the core aggregation transportation charge. (OIR, *mimeo.*, page 18.)

#### **3.3.3.2. EPSMA**

SDG&E, SoCalGas, and SPURR/ABAG POWER agree with the Commission's proposal, PG&E offers a variation, and TURN disagrees. We adopt our initial proposal with PG&E's variation and modified by application of a net present value, as explained below. We reject TURN's recommendation, as also explained below.

PG&E proposes to implement the Commission's proposal by allocating a percentage of the total Settlement consideration for PG&E's core gas customers

to core aggregation customers.<sup>13</sup> This amount would be recorded into the EPMSA, and, according to PG&E, incorporated into core aggregation transportation rates in the next Biennial Cost Allocation Proceeding (BCAP) or annual true-up. Further, PG&E proposes that the total amount allocated to core aggregation customers be set aside from the upfront cash amount, so that future deferred payments would be allocated 100% to core procurement customers. PG&E asserts that this would result in transportation rates for approximately 12 months that are lower for core aggregation customers compared to bundled core gas customers, but that in about 12 months the transportation rates paid by core aggregation and core procurement customers would again be equal.

In their reply comments, SPURR/ABAG POWER support PG&E's proposal. Bower & French, however, oppose any "front load" of Settlement consideration to core aggregation customers, saying they should receive settlement benefits on a pro rata basis over time just as other ratepayer groups.

We agree with PG&E and SPURR/ABAG POWER as long as the upfront payment is based on a net present value, just as we adopt for the refund plan for core-elect and core-subscription customers. This approach promotes reasonable administrative feasibility for what is an important but relatively small portion of the Settlement. It will facilitate the ability to set equal core aggregation and core procurement transportation rates paid by these customers within about 12 months. The use of a net present value provides equity among customers. As

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<sup>13</sup> The percentage would be based on the EPMSA, and is currently estimated by PG&E to be about 2.2%. Based on PG&E's current estimates, this would allocate about \$1.8 million to core aggregation customers.

a result, each of the four gas utilities should file an Advice Letter with the proposed refund plan consistent with this approach.<sup>14</sup>

TURN contends that core aggregation customers should not receive a share of the El Paso consideration through a refund on their gas transportation charges. Rather, TURN claims that gas commodity charges for core aggregation customers have been fully unbundled for some time. As such, TURN says these customers did not pay any part of the transporting utility's gas purchase costs, but all their payments went directly to their competitive gas supplier. Therefore, TURN concludes that any refunds for these customers should come from their competitive gas supplier, not from the utility's bundled core customers who paid the entire cost of gas themselves, according to TURN.

We are not persuaded by TURN. Rather, as SPURR/ABAG POWER correctly point out, the MSA is entered into on behalf of all individuals and entities in California that purchased gas during the relevant period. The MSA covers the utilities' core and noncore gas customers, including core aggregation customers.

The Allocation Agreement allocates the consideration separately to core and noncore customers, but among core customers, it makes no distinction between bundled sales and core aggregation customers. Moreover, the Allocation Agreement provides that the percentage allocations set forth in the table in Section 4 "will be distributed by CPUC jurisdictional utilities, for the

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<sup>14</sup> Just as with the Advice Letter for core-elect and core-subscription, if there is any reasonable chance of dispute about the likely forecast of the payment stream, each utility's proposal should test the sensitivity of the forecast by including at least two forecast payment streams to which is applied the same discount rate.

benefit of their core natural gas...ratepayers, in the form of refunds, disbursements, or credits..." (Allocation Agreement, Section 4(b).) The amounts allocated by the Allocation Agreement to the utilities' core gas customers are not in turn limited to bundled sales customers. Parties to the MSA could have done so, but did not.

Moreover, Settlement consideration is not limited to just those customers who purchased their supplies directly from gas utilities. Noncore customers who purchased their gas from third party suppliers, for example, will get approximately 16.5% of the El Paso consideration. Noncore customers are not required to obtain their portion of the refund from their competitive suppliers, and neither should core aggregation customers be required to obtain their portion from their core aggregators. Indeed, the El Paso consideration is intended for end-customers not suppliers, marketers or core aggregators. No specific allocation is provided in the Settlement for core aggregation customers, and it is reasonable to provide equitable treatment for these customers in the manner we adopt here.

#### **3.3.4. Limited Additional Wholesale Transportation Customers**

Six entities buy gas directly from suppliers, pay PG&E for transportation service (as wholesale gas transportation customers of PG&E), and then resell the gas to their own end-use customers.<sup>15</sup> The end-use customers of these six entities

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<sup>15</sup> These entities are the City of Palo Alto, the City of Coalinga, West Coast Gas-Mather, Island Energy, Alpine Natural Gas, and West Coast-Castle. Palo Alto makes up about 90% of the total gas usage of these six wholesale customers. They are served on PG&E Schedule G-WSL (gas transportation service to wholesale/resale customers).

suffered harm from high natural gas prices at the California border just as did other customers who will receive consideration under the Settlement, and deserve an equitable portion of the consideration just as do other customers similarly harmed by the high natural gas prices. These six PG&E customers and their end-use customers, however, were not included in the proposed treatment described in the OIR of the Settlement consideration to be received by PG&E.

A supplemental proposed treatment was filed and served for comment. (See Ruling dated August 27, 2003.) PG&E filed comments largely in support. Palo Alto filed reply comments also largely in support. We adopt the treatment described below.

These six customers will be treated in the same manner as core aggregation customers. They will receive a proportional share of PG&E's core settlement consideration based upon the wholesale customer class share of PG&E's total system natural gas throughput, excluding noncore volumes, for the 12 months immediately prior to the time that PG&E first receives the consideration.<sup>16</sup> The allocation to wholesale customers will be taken from the upfront cash allocated to core procurement and core subscription customers (so that future deferred payments will be allocated 100% to core customers). The wholesale share of the settlement will be booked to a subaccount of the EPSMA until the appropriate ratemaking proceeding (i.e., BCAP or annual true-up) where the memorandum account balance can be used to partially offset PG&E's allocated revenue

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<sup>16</sup> According to PG&E, this treatment yields no change in the allocation percentage to core aggregation customers when rounding the percentage to one decimal place. (Comments dated September 4, 2003, page 2.)



requirement recoverable in the authorized tariff rate for the wholesale transportation charge. This will result in about 1.3% of the Settlement consideration for PG&E's core gas customers being allocated to these six customers.<sup>17</sup> Consistent with our adopted treatment of the core aggregation consideration, the amount allocated to these six wholesale customers will be calculated based on a net present value.<sup>18</sup>

### **3.4. Incentive Mechanisms**

The Commission has adopted a variety of incentive regulatory mechanisms for several utilities. These mechanisms are intended to provide utilities with an incentive to further reduce costs or improve services beyond the levels expected (and funded) in either base rate-related proceedings (usually a general rate case or a cost of service proceeding) or energy procurement proceedings (e.g., acquisition of natural gas or electricity). Fundamentally, the utilities are provided an opportunity to negotiate exceptional prices or find various efficiencies, and thereby benefit in part or whole from the incremental savings.

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<sup>17</sup> PG&E estimates this is a benefit of about \$1.05 million for these six customers, with an equal reduction in upfront cash of about \$1.045 million for PG&E core procurement customers, and about \$0.005 million for PG&E core subscription customers. (Comments dated September 4, 2003, page 4.)

<sup>18</sup> Palo Alto objects to PG&E's comments to the extent that the comments might be read to propose that the six wholesale customers be required to make regulatory or ratemaking concessions in order to qualify for a share of the El Paso consideration (i.e., to be "treated like core customers"). We do not read PG&E's comments to propose such a requirement, and we adopt no such requirement.

In the OIR, we proposed that the utilities not receive any unintended or unearned benefit or detriment through application of an incentive mechanism in relation to the Settlement. Rather, we proposed that in adopting a recovery mechanism for the Settlement, the determination of any incentive be calculated as if the Settlement payments had not occurred. (OIR, *mimeo.*, page 19.)

No party objects to the proposed treatment, and we adopt the proposal as stated in the OIR. As a result, all consideration received pursuant to the Settlement will be treated in a manner to be neutral with respect to utility incentive mechanisms.

SCE points out that it may request an equitable adjustment to permit it to retain for shareholders the refund of costs SCE will receive pursuant to the Settlement (e.g., attorneys' fees). In support, SCE cites Section 3.3 of the settlement agreement between SCE and the Commission in *SCE v. Lynch et al.* SCE also says, however, that such request is not properly addressed in this proceeding.

We agree with SCE that the cited settlement agreements support the treatment identified by SCE, and that SCE may seek an adjustment in an appropriate proceeding. We will determine the merits of SCE's requested adjustment when proposed in an appropriate proceeding.

### **3.5. Income Taxes**

In the OIR, we stated our belief that refunds from the Settlement should have no tax effect on utilities. We said that we could not see a basis for utilities to be taxed for any of the consideration under the Settlement because we are requiring that the consideration received by utilities inure to the benefit of their ratepayers. If, nevertheless, utilities are taxed for Settlement consideration, we proposed that utilities be able to adjust the consideration such that only the net

revenues be a credit to their ratepayers. Alternatively, we proposed that utilities be made whole by being allowed to recover costs associated with any tax liability for the consideration in the utilities' next ratemaking application before the Commission. (OIR, *mimeo.*, pages 19-20.)

Parties generally agree with the Commission's assessment that there will be no tax effect. As a result, we do not adopt a ratemaking adjustment for any anticipated tax effect. Should an adverse tax effect occur, however, a utility may propose the most efficient treatment at that time. That is, to the extent actual tax payments are later required by the Internal Revenue Service or other governmental taxing authority, a utility may then propose (a) adjustment of the consideration such that only the net revenues are credited to ratepayers, (b) allowing cost recovery of any tax liability in the next appropriate ratemaking proceeding, or (c) authority to create a memo account to track adverse tax implications until addressed in a ratemaking proceeding.

For PG&E, Bower & French say that the proposed bankruptcy SA now provides an after-tax treatment (wherein the net after-tax amount of El Paso consideration will be applied to reduce the Regulatory Asset). Bower & French argue that the full benefit of the El Paso consideration should flow through to ratepayers without any portion being "siphoned off" for taxes, and that it should be possible to structure the transaction to achieve this goal. For example, they assert that the Commission's proposed accounting should not be adopted if an adverse tax effect results but an alternative should be adopted, such as passing the consideration directly to ratepayers as a rebate or credit.

We decline to adopt their proposal. We expect no adverse tax effect from the El Paso consideration. PG&E tax issues, if any, will be addressed in the bankruptcy proceeding to the extent they are an issue in the proposed SA, and

are relevant to the Commission's consideration of the proposed SA, as discussed above. Further, we decline to adopt a rebate or bill credit approach to avoid a problem that we do not reasonably foresee occurring.

### **3.6. Other Issues**

#### **3.6.1. Allocation Percentages**

In their initial comments, SDG&E and SoCalGas request additional disclosure of the analysis behind the allocation percentages in the Allocation Agreement. SDG&E/SoCalGas do not, however, identify the party or parties from whom the data should be obtained, nor move to compel disclosure from any specific party or parties.

We decline to order disclosure in general, or specifically name any otherwise unidentified party or parties to disclose the analysis behind the allocation percentages in the Allocation Agreement. The reasonableness of the Allocation agreement, including the allocation percentages, is before the Superior Court and others, not this Commission. Moreover, SDG&E/SoCalGas fail to convince us of the relevance, if any, here. For example, SDG&E/SoCalGas neither explain how they might use such information to modify any recommendation here, nor show how the analysis behind the allocation percentages would benefit our consideration of any issue.

#### **3.6.2. Southwest \$2.7 Million Penalty**

Southwest proposes that the first \$2,691,675 of whatever amount is ultimately allocated for Southwest's core customers be retained by Southwest for the benefit of Southwest's shareholders. In support, Southwest says its shareholders have already compensated Southwest's core customers pursuant to D.02-08-064. We decline to adopt Southwest's proposal.

The disallowance of \$2,691,675 in gas procurement cost recovery was “because of imprudent managerial actions during the review period of June 1, 1999 through May 31, 2001.” (D.02-08-063, Conclusion of Law 6, *mimeo.*, page 3.) It was not, as Southwest characterizes it, for shareholders and ratepayers to ‘share the pain’ when the true culprit of high prices had not yet been identified. The \$2.7 million disallowance is unrelated to the El Paso Settlement.

### **3.6.3. Payment to Southwest**

Southwest also proposes that it be paid first. That is, Southwest urges that the Commission “consider having the entirety of Southwest’s allocation distributed out of the initial settlement proceeds paid by El Paso.” (Initial Comments, page 4.) In support, Southwest cites administrative efficiency, since, according to Southwest, an estimated \$5 million payable to Southwest is dwarfed by the estimated \$1.5 billion total proceeds.

While Southwest’s portion may not be a large percentage of the total, it is beyond our jurisdiction to redistribute the allocations between utilities. That is a matter regarding the reasonableness of the Settlement, and is before Superior Court.

We may reallocate amounts between ratepayers within a company when reasonable to do so (e.g., the net present value amount paid to core-elect customers, core-subscription customers, core aggregation customers, and six PG&E wholesale transportation customers). Southwest, however, makes no compelling claim that we have jurisdiction to reallocate amounts among utilities. We are not persuaded that we may, or should, do so.

### **3.6.4. Timing of Rate Adjustments and Appeals**

Bower & French propose that Settlement consideration be immediately provided to ratepayers when the times for all appeals of the Superior Court’s

final approval order have expired, whether or not appeals of the Commission's order are pending. The Commission should not wait for the exhaustion of all appeals of its order, according to Bower & French, since leaving a large amount of money in an escrow account at low interest rates does not make sense. Rather, Bower & French say that the Commission may recapture the consideration by rate increases or surcharges if its determination is later reversed on appeal.

We decline to adopt this proposal. This order is effective immediately, and will remain in effect unless stayed (e.g., by a party seeking a stay here, or in an appellate court, and meeting the high standards for a stay). Consequently, unless this order is stayed, utilities must comply with this order. We simply decline now to prejudge issues related to an application for a stay, if any. As PG&E says, if an issue does arise through an appeal of this decision, we may decide at that time whether it is worth holding up disbursement until the issue is resolved, or to rely on recapture of disbursed amounts, if necessary.

#### **4. Comments on Draft Decision**

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_ and reply comments were filed on \_\_\_\_\_.

#### **5. Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Burton W. Mattson is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. Energy customers in California and three western states will receive an estimated \$1.5 billion (nominal value) as a result of settling litigation with El Paso.

2. A series of decisions and agreements now govern CDWR cost recovery from utilities and ratepayer under our jurisdiction (e.g., D.02-02-051 regarding the Rate Agreement).

3. Adjustment of future CDWR revenue requirement allocations to reflect allocations in effect during 2000 and 2001 would add complexity, and would conflict with updated CDWR allocations (if any), while using allocation percentages in effect at the time El Paso consideration is distributed to CDWR is simpler and consistent with the Commission's preference for a minimalist approach.

4. Settlement revenues credited to an electric utility's ERRA will expeditiously reflect Settlement payments as a reduction in procurement costs.

5. A reasonable and equitable approach to reducing SDG&E's AB 265 undercollection is to first apply 70% of SDG&E's share of Settlement revenues to the AB 265 subaccount in SDG&E's TCBA, with the remaining 30% of SDG&E's share allocated to the large customer subaccount of the ERRA (ABX1 43) and, upon payment in full of the undercollection in SDG&E's AB 265 subaccount, applying the balance of all Settlement revenues to SDG&E's ERRA.

6. The 70/30 approach to reducing SDG&E's AB 265 undercollection is consistent with our preferred minimalist approach, utilizes SDG&E's existing accounting mechanisms to the fullest extent possible, and provides an equitable accounting for Settlement consideration allocated to SDG&E's electric customers.

7. The amount of unrecovered costs payable by PG&E electric ratepayers will be determined in other proceedings (e.g., PG&E bankruptcy proceeding (I.02-04-026) or the rate stabilization proceeding (A.00-11-038 et al.)).

8. The use of an interest bearing memorandum account for PG&E will not unacceptably delay the return of Settlement money to PG&E ratepayers, but will

ensure that PG&E rates are reduced below what they would otherwise be absent El Paso consideration, and will be accomplished in a coordinated process that properly treats many complex interrelated matters.

9. To the extent that utility DA customers must help pay for the utilities' previously unrecovered costs, DA customers are due a fair share of the consideration received by California electric utilities under the Settlement.

10. A reasonable and equitable allocation of El Paso consideration between full service and DA customers for SCE and SDG&E is to allocate the proceeds to the ERRA for full service customers (with the further 70/30 split adopted for SDG&E), and the DA CRS tracking or memorandum account for DA customers, based on the relative percentage of full-service and DA to total kWh system deliveries in the preceding 12 months prior to their first receipt of consideration under the MSA.

11. For PG&E, a reasonable and equitable treatment for DA customers is to place El Paso consideration into an interest bearing memorandum account for the future benefit of PG&E's ratepayers once the Commission determines the extent to which the full-service ratepayers and DA customers will pay PG&E's previously unrecovered costs.

12. An allocation between full service and DA customers based on deliveries in the preceding 12 months prior to the first receipt of consideration under the MSA avoids an adjustment based on current DA load, reasonably compensates those who were damaged, is a stable and simple method, and is consistent with the Commission's preference for a minimalist approach.

13. Crediting Settlement revenues attributable to core gas customers to the PGA will expeditiously reflect Settlement benefits as a reduction to core gas procurement costs.



14. For Southwest, crediting either the CFCAM or PGA will accomplish the purpose of expeditiously reflecting the value of the Settlement as a reduction to core gas procurement costs, while applying Settlement proceeds first to the CFCAM (until its balance is zero) will mitigate the rate impact of recovering Southwest's undercollected CFCAM balance.

15. Core-elect and core-subscription gas customers will receive the benefit of El Paso consideration by the credit to the gas utilities' PGA (or CFCAM for Southwest) to the extent they are still served by the gas utilities' core portfolios.

16. Requiring noncore customers who were core-elect or core-subscription customers for some or all of the March 1, 2000 through May 31, 2001 time frame to apply to their utility for a refund of their share of Settlement consideration entails administrative costs disproportionate to the amount of money to be allocated to this group.

17. A reasonable and equitable refund plan returns a pro rata share of Settlement consideration to current noncore customers who were core subscription customers for some or all of the period between March 1, 2000 and May 31, 2001, and, once the refund is complete, transfers the remaining balance, if any, to the PGA.

18. Use of a net present value to discount up-front payments to some customers is administratively feasible, efficient and equitable, while it minimizes administrative cost and complexity.

19. Gas consumers who were part of the core aggregation program during the March 1, 2000 through May 31, 2001 period, but who now purchase gas from utilities, will receive their share of the El Paso consideration through utility credits to the PGA (or CFCAM for Southwest).

20. Gas customers who were part of the core aggregation program during the March 1, 2000 through May 31, 2001 period, and who still purchase gas from core aggregators, will not receive El Paso consideration via the credit to the utilities' PGA (or CFCAM).

21. Core aggregation customers pay a core aggregation transportation charge that gas utilities charge for the transportation of gas provided by the core aggregators.

22. A reasonable and equitable treatment of El Paso consideration for customers of core aggregators transporting natural gas on the utility's facilities is as described in this order (i.e., book a proportional share of the Settlement consideration attributable to core aggregation customers in the EPSMA; set aside the total amount allocated to core aggregation customers from the upfront cash amount based on a net present value of the payment stream that would otherwise occur over time; use the EPSMA balance at the time of the next appropriate ratemaking proceeding to partially offset the utility's allocated core aggregation transportation revenue requirement; provide a proportional share of the Settlement consideration based upon the class's share of the utility's total system natural gas throughput, excluding noncore volumes, for the 12 months immediately prior to the time that the utility first receives the consideration; allocate the Settlement consideration to a fractional-cent per-therm for all deliveries, excluding noncore, to all customers served by respondents).

23. Transportation rates paid by core aggregation and core procurement customers will be equal in about 12 months using the approach described above.

24. Noncore customers are not required to obtain their portion of the refund from their competitive suppliers, and neither should core aggregation customers be required to obtain their portion from their core aggregators.

25. El Paso consideration is intended for end-customers not suppliers, marketers or core aggregators.

26. The end-use customers of six wholesale gas transportation customers of PG&E suffered the same harm from high natural gas prices at the California border as did other end-use gas customers.

27. A reasonable and equitable treatment for these six PG&E wholesale gas transportation customers is to treat them in a manner similar to the treatment for core aggregation customers (i.e., they receive a proportional share of PG&E's core settlement consideration based upon the wholesale customer class share of PG&E's total system natural gas throughput (excluding noncore volumes) for the 12 months immediately prior to the time that PG&E first receives the consideration; the allocation is taken from the upfront cash allocated to core procurement and core subscription customers based on a net present value of the future payment stream; their Settlement share is booked to a subaccount of the EPSMA until the appropriate ratemaking proceeding, where the memorandum account balance is used to partially offset PG&E's allocated wholesale transportation revenue requirement).

28. No party objects to treating El Paso consideration in a manner that is neutral with respect to utility incentive mechanisms.

29. The Commission's adopted treatment of El Paso consideration is intended to have no tax effect on utilities because the entire consideration received by utilities inures to the benefit of their ratepayers.

30. The disallowance of \$2,691,675 in gas procurement cost recovery for Southwest was because of imprudent management, not for shareholders and ratepayers to share the pain of high prices.

**Conclusions of Law**

1. No party requests evidentiary hearing, and none is required.
2. Allocation percentages for El Paso consideration distributed through CDWR's revenue requirement should not remain fixed based on allocation percentages in effect during the 2000-01 period, but should change over time as allocation percentages change.
3. Continuous DA customers should not receive any portion of the CDWR refunds
4. Settlement revenues should be credited to SCE's ERRRA.
5. SDG&E should apply 70% of SDG&E's share of Settlement revenues to the AB 265 subaccount of SDG&E's TCBA, and 30% to the large customer subaccount of the ERRRA (ABX1 43), until payment in full of the undercollection in SDG&E's AB 265 subaccount, at which time the balance of all Settlement revenues should then be applied to SDG&E's ERRRA.
6. The Commission should require that PG&E establish an interest bearing memorandum account where it shall place the proceeds of the El Paso Settlement consideration to be held for PG&E's electric customers, and further require that PG&E credit these proceeds to benefit its electric ratepayers for unrecovered costs its ratepayers will have to pay once determined in either the PG&E bankruptcy proceeding (I.02-04-026) or the rate stabilization proceeding (A.00-11-038 et al.).
7. For SCE and SDG&E, Settlement proceeds for electric customers should be allocated to the ERRRA for full service customers, and the DA CRS tracking or memorandum account for DA customers, based on the relative percentage of full-service and DA to total kWh system deliveries in the preceding 12 months prior to their first receipt of consideration under the MSA.

8. For PG&E, El Paso consideration should be placed in an interest bearing memorandum account for the future benefit of PG&E's ratepayers once the Commission determines the extent to which the full-service ratepayers and DA customers will pay PG&E's previously unrecovered costs.

9. Settlement proceeds allocated to core gas customers of PG&E, SDG&E and SoCalGas should be credited by each utility's PGA, with the first Settlement payment net of the discounted amounts allocated up-front to some customers.

10. Settlement proceeds allocated to core gas customers of Southwest should first be credited to Southwest's CFCAM (net of the discounted amounts allocated up-front to some customers) until the CFCAM balance is zero, with the remainder then be applied to the PGA balance.

11. Each gas utility should propose a refund plan for its customers who were core-elect or core-subscription customers for some or all of the March 1, 2001 through May 31, 2001 period following the principles stated in this order (i.e., the refund plan should be based on the customer's purchases from the utilities' core portfolios (in therms) during the period at issue, as shown on their bills; the refund should be allocated to a fractional-cent per-therm for all throughput, with rate treatment as discussed regarding core aggregation; the refund should be paid up-front based upon a net present value of a reasonable forecast of potential payments; the refund should be accounted for by initially recording the revenues in the PGA with utility refunds or credits to these noncore customers booked to the PGA as an expense; and, once the refund is complete, the remaining balance, if any, should be transferred to the PGA).

12. Each gas utility with core aggregators transporting natural gas on the utility's facilities should follow the refund approach described in this order (i.e., book a proportional share of the Settlement consideration attributable to core

aggregation customers in a new account called the EPSMA; the amount for core aggregation customers should be set aside from the upfront cash payment based on a net present value calculation; the EPSMA balance should be used, at the time of the next appropriate ratemaking proceeding, to partially offset the utility's allocated core aggregation transportation revenue requirement; the proportional share of for these customers should be based upon their class's share of the utility's total system natural gas throughput, excluding noncore volumes, for the 12 months immediately prior to the time that the utility first receives the consideration; the Settlement consideration should be allocated to a fractional-cent per-therm for all deliveries, excluding noncore, to all customers served by respondents, with the core aggregators' share recorded in the EPSMA until it is credited against the core aggregation transportation charge).

13. Six wholesale gas transportation customers of PG&E should be treated in the same manner as core aggregation customers (i.e., they receive a proportional share of PG&E's core settlement consideration based upon the wholesale customer class share of PG&E's total system natural gas throughput, excluding noncore volumes, for the 12 months immediately prior to the time that PG&E first receives the consideration; the allocation should be taken from the upfront cash allocated to core procurement and core subscription customers; the wholesale share of the settlement should be booked to a subaccount of the EPSMA until the appropriate ratemaking proceeding where the memorandum account balance should be used to partially offset PG&E's allocated wholesale transportation revenue requirement; and the amount allocated for these customers should be calculated based on a net present value).

14. Utilities should not receive any unintended or unearned benefit or detriment through application of an incentive mechanism as a result of the

Settlement, but the determination of any incentive should be calculated as if the Settlement payments had not occurred.

15. The adopted accounting and ratemaking treatment of Settlement consideration should have no tax effect on utilities, and no ratemaking adjustment should be adopted for a tax effect that is not expected to occur.

16. Should an adverse tax effect occur a utility may propose the most efficient treatment at that time.

17. Southwest's proposal should not be adopted that the first \$2,691,675 of the amount ultimately allocated for Southwest's core customers be retained by Southwest for the benefit of Southwest's shareholders.

18. Southwest's proposal should not be adopted that among all beneficiaries of the El Paso Settlement Southwest be paid first.

19. The proposal of Bower & French should not be adopted that Settlement consideration be immediately provided to ratepayers when the times for all appeals of the Superior Court's final approval order have expired whether or not appeals are pending of the Commission's order.

20. To prevent unnecessary or unreasonable delay, this order should be effective immediately so that (a) those reviewing the Settlement can now take the Commission's accounting and ratemaking treatment into consideration in making their decisions, and (b) benefits are expeditiously provided to California utility ratepayers.

## **O R D E R**

**IT IS ORDERED** that:

1. The accounting and ratemaking treatment discussed in this order, and summarized in Attachment A, is adopted.
2. Within ten days of the date this order is mailed, respondent utilities Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southwest Gas Corporation shall file and serve an Advice letter or Advice letters, to propose refund plans and amendments to their tariffs as needed to implement the accounting and ratemaking treatment adopted herein. The Advice letter(s) shall be in compliance with General Order 96-A.
3. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.



## **ATTACHMENT A**

### **ADOPTED ACCOUNTING AND RATEMAKING TREATMENT**

#### **1. OVERVIEW**

El Paso Settlement (Settlement) proceeds may be distributed through numerous transactions over a period of up to 20 years rather than in a single payment. As a result, we adopt a simple, direct, uniform and minimalist approach, and use existing accounting mechanisms, to the fullest extent possible. We decline to use complicated, indirect and controversial methods that will require the continued use of limited resources of parties, Commission staff and the Commission, and which may promote disputed outcomes for up to 2 decades.

We do this because the refund may be protracted, making it infeasible to track the exact customers and prior consumption during the 15-month period that led to the Settlement for the purpose of refunds that may last up to 20 years. Moreover, several customers who were directly harmed during the time in question (e.g., noncore, municipalities) will have the opportunity in the court's Settlement claims process to establish that harm and receive a fair share of the consideration. Also, the provisions of California Public Utilities (PU) Code § 453.5 are satisfied given the impracticability of tracking the customers harmed during the energy crisis over the next 15 to 20 years, the court's claims process, and the explicit authorization for the Commission under § 453.5 to authorize refunds based on current usage.<sup>1</sup>

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<sup>1</sup> Section 453.5 provides: "Whenever the commission orders rate refunds to be distributed, the commission shall require public utilities to pay refunds to all current

*Footnote continued on next page*

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Therefore, we adopt an accounting and ratemaking approach that is simple, direct and uniform; conserves limited resources; is consistent with the PU Code; and promotes an equitable and reasonable outcome.

**2. CDWR REVENUE REQUIREMENT**

The Commission has adopted a process for the recovery of the revenue requirement of the California Department of Water Resources (CDWR) for long-term energy contracts and other related costs.<sup>2</sup> This process will continue to be used for distribution of El Paso Settlement consideration.

That is, to the extent CDWR receives consideration under the Settlement, CDWR will pass the benefit through to retail customers as an adjustment to CDWR's revenue requirement. This will automatically adjust retail rates, when presented by CDWR to the Commission for processing under established procedures, compared to what rates would otherwise have been. Allocation percentages between utilities are not fixed, but the percentages applicable to CDWR's revenue requirement at the time the consideration is passed through to

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utility customers, and, when practicable, to prior customers, on an equitable pro rata basis without regard as to whether or not the customer is classifiable as a residential or commercial tenant, landlord, homeowner, business, industrial, educational, governmental, nonprofit, agricultural, or any other type of entity. For the purposes of this section, "equitable pro rata basis" shall mean in proportion to the amount originally paid for the utility service involved, or in proportion to the amount of such utility service actually received. Nothing in this section shall prevent the commission from authorizing refunds to residential and other small customers to be based on current usage."

<sup>2</sup> See, for example, D.02-02-051.

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retail customers by the Commission shall be applied. CDWR has already committed that all consideration received by CDWR "shall be used solely to reduce amounts which contribute to CDWR's revenue requirements."

(Allocation Agreement, paragraph 4(c)(ii).)

**3. ELECTRIC UTILITIES**

**3.1. ERRA for SCE and SDG&E**

**SCE:** Southern California Edison Company (SCE) shall credit Settlement revenues to its Energy Resource Recovery Account (ERRA).

**SDG&E:** San Diego Gas and Electric Company (SDG&E) shall credit 70% of SDG&E's share of Settlement revenues attributed to SDG&E's electric customers to the Assembly Bill (AB) 265 subaccount of SDG&E's Transition Cost Balancing Account (TCBA), and 30% to the large customer subaccount of the ERRA (ABX1 43). Upon payment in full of the undercollection in SDG&E's AB 265 subaccount, the balance of all Settlement revenues shall be applied to SDG&E's ERRA.

**3.2. PG&E**

Pacific Gas and Electric Company (PG&E) shall place the Settlement consideration attributed to PG&E's electric customers into an interest bearing memorandum account. The balance in the memorandum account shall be used to pay previously unrecovered costs to the extent ultimately borne by ratepayers as determined by the Commission in either the Commission's bankruptcy proceeding (I.02-04-026) or the rate stabilization proceeding (A.00-11-038 et al.) The remaining balance, if any, in the memorandum account (e.g., if Settlement consideration is paid over 20 years) shall be returned to ratepayers through a

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credit to an authorized balancing account, or other account, in effect at the time. As a result, PG&E ratepayers shall ultimately be responsible for less costs than they otherwise would have been, and ratepayer rates shall be less than they otherwise would have been, absent the full amount of the Settlement consideration payable to PG&E.

**3.3. DA Customers**

**SCE and SDG&E:** El Paso Settlement proceeds shall be allocated, when paid pursuant to the Settlement, to full service and Direct Access (DA) customers based on the relative percentage of full-service and DA usage to total kWh system deliveries in the preceding 12 months prior to the first receipt of consideration under the Master Settlement Agreement (MSA). The allocated amount shall be entered into the Direct Access Cost Responsibility Surcharge (DA CRS) Tracking Account for SCE, and the DA CRS Memorandum Account for SDG&E.

**PG&E:** El Paso Settlement proceeds shall be placed in an interest bearing memorandum account for the future benefit of PG&E's ratepayers. The benefits shall be distributed in connection with the Commission's determination of the extent to which the full-service and DA customers shall pay PG&E's previously unrecovered costs pursuant to the two matters discussed above (i.e., bankruptcy and rate stabilization proceedings), and consistent with the method there adopted for present and future reduction of costs or rates compared to what they otherwise would have been.

**4. NATURAL GAS UTILITIES**

**4.1. PGA**

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**PG&E, SDG&E, Southern California Gas Company (SoCalGas):** El Paso Settlement consideration attributable to core gas customers shall be credited to each utility's purchased gas account (PGA). The first payment under the MSA recorded to the PGA shall be net of up-front payments for some few customers (e.g., core-elect, core-subscription, core aggregation, PG&E limited wholesale transportation).

**Southwest Gas Corporation (Southwest):** El Paso Settlement consideration allocated to core gas customers shall first be credited to the core fixed cost adjustment mechanism (CFCAM). Once the CFCAM balance is zero, the consideration shall be applied to the PGA. The first payment under the MSA recorded to the CFCAM (or PGA if the CFCAM balance is zero) shall be net of up-front payments for some few customers (e.g., core-elect, core-subscription, core aggregation).

**4.2. Core-Elect and Core-Subscription Customers**

To the extent that core-elect and core-subscription customers are eligible to submit claims in the Superior Court's claims process for noncore customers, they are entitled to submit such claims pursuant to the Court's process. As such, they shall not receive a duplicative share of the California natural gas utilities' consideration under the Settlement for the March 1, 2000 through May 31, 2001 period for which they were not purchasing gas from the core portfolio. To the extent core-elect and core-subscription customers were purchasing gas from utilities' core portfolio, they are eligible for a portion of the El Paso consideration through their gas utility using the Commission-adopted process.

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The process is that each gas utility shall submit an Advice Letter with a proposed refund plan for the affected core-elect and core-subscription customers. The refund plan shall be a pro rata share of El Paso Settlement consideration to noncore customers who are currently not core-subscription customers but who were core-elect or core-subscription for some part or all of the 15-month period from March 1, 2000 through May 31, 2001. The refund (or credit) shall be based on the customer's purchases from the utility's core portfolios (in therms) during the period at issue, as reflected on their bills. The refund (or credit) shall be allocated to a fractional cent per therm for all throughput, using the same refund rate treatment adopted below for core aggregation customers. The refund plan shall be based on paying the net present value of the refund (or credit) over a period of no more than 12 months.<sup>3</sup> Utility refunds (or credits) shall be booked to the PGA (or CFCAM for Southwest) as an expense. Once the refund is complete, any remaining balance shall be transferred to the PGA (or CFCAM for Southwest).

**4.3. Core Aggregation**

Each gas utility which has core aggregators transporting natural gas on the utilities' facilities shall book the proportional share of the Settlement consideration attributable to core aggregation customers in a new memorandum

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<sup>3</sup> If there is a reasonable chance of dispute about the likely forecast of the payment stream (which could otherwise be up to 20 years), each utility shall include in its proposed refund plan a test of the sensitivity of the forecast by including at least two forecast payment streams to which is applied the same discount factor.

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account called the El Paso Settlement Memorandum Account (EPSMA). At the next appropriate ratemaking proceeding, the memorandum account balance shall be used to partially offset the utility's allocated revenue requirement recoverable in the authorized tariff rate for the core aggregation transportation charge.

Core aggregation customers shall receive a proportional share of the California natural gas utility's Settlement consideration based upon their class' share of the utility's total system natural gas throughput, excluding noncore volumes, for the 12 months immediately prior to the time that the utility first receives the consideration. The Settlement consideration shall be allocated to a fractional-cent per therm for all deliveries, excluding noncore, to all customers served by respondents with the core aggregators' share recorded in the EPSMA until it can be credited against the core aggregation transportation charge.

The amount allocated to core aggregation customers shall be set aside from the initial (up front cash) payments by El Paso of Settlement consideration, so that future deferred payments can be allocated 100% to core procurement customers. The refund (or credit) to core aggregation customers shall be paid within 12 months so that in approximately 12 months the transportation rates paid by core aggregation and core procurement customers is equal, or nearly

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equal. The amount allocated to core aggregation customers shall be calculated based on a net present value of the otherwise forecast future payment stream.<sup>4</sup>

**4.4. PG&E Wholesale Transportation Customers**

The six customers served on PG&E Schedule G-WSL shall be treated in the same manner as adopted for core aggregation customers. They shall receive a proportional share of PG&E's core settlement consideration based upon the wholesale customer class share of PG&E's total system natural gas throughput, excluding noncore volumes, for the 12 months immediately prior to the time that PG&E first receives the consideration. The allocation to wholesale customers shall be taken from the initial (up front cash) payments allocated to core procurement and core subscription customers (so that future deferred payments will be allocated 100% to core customers). The wholesale share of the settlement shall be booked to a subaccount of the EPSMA until the appropriate ratemaking proceeding (i.e., BCAP or annual true-up) where the memorandum account balance shall be used to partially offset PG&E's allocated revenue requirement for the wholesale transportation charge. Consistent with the adopted treatment

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<sup>4</sup> If there is a reasonable chance of dispute about the likely forecast of the payment stream (which could otherwise be up to 20 years), each utility shall include in its proposed refund plan a test of the sensitivity of the forecast by including at least two forecast payment streams to which is applied the same discount factor.



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of the core aggregation consideration, the amount allocated to these six wholesale customers shall be calculated based on a net present value.<sup>5</sup>

**5. INCENTIVE MECHANISMS**

The determination of an incentive, if any, under a Commission-adopted utility incentive mechanism shall be calculated as if Settlement payments had not occurred. That is, all El Paso consideration shall be treated in a manner to be neutral with respect to utility incentive mechanisms.<sup>6</sup>

**6. INCOME TAXES**

El Paso Settlement consideration shall be treated through balancing and other accounts described herein in a manner to have no tax effect on any respondent utility. Rather, El Paso Settlement consideration will offset and pay for costs already otherwise incurred (or in PG&E's case, will offset previously unrecovered costs). Revenues shall equal expenses, and there shall be no resulting tax liability.

Nevertheless, if a utility is taxed for El Paso Settlement consideration and actual tax payments are required by the Internal Revenue Service or other governmental taxing authority, a utility may at that time propose (a) adjustment

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<sup>5</sup> If there is a reasonable chance of dispute about the likely forecast of the payment stream (which could otherwise be up to 20 years), each utility shall include in its proposed refund plan a test of the sensitivity of the forecast by including at least two forecast payment streams to which is applied the same discount factor.

<sup>6</sup> SCE may seek an adjustment in another proceeding, as appropriate, for retention by shareholders of the refund of costs that SCE may receive from Superior Court (e.g., attorneys' fees).

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of the consideration such that only the net revenues are credited to ratepayers, (b) allowing cost recovery of any tax liability in the next appropriate ratemaking proceeding, or (c) authority to create a memorandum account to track adverse tax implications until addressed in a ratemaking proceeding.

**7. ADVICE LETTERS**

Each respondent electric and gas utility shall file an advice letter, or advice letters. The advice letter(s) shall amend the utility's tariffs as necessary to add specific provisions for treatment of the El Paso Settlement consideration as directed herein.

**(END OF ATTACHMENT A)**

**ATTACHMENT B  
PARTIES AND ACRONYMS**

<b>LINE NO</b>	<b>ACRONYM</b>	<b>PARTY OR ENTITY</b>
1	A.	Application
2	AG	Attorney General
3	AL	Advice Letter
4	Bower & French	William P. Bower and Thomas L. French
5	CDWR	California Department of Water Resources
6	CEOB	California Electricity Oversight Board
7	CFCAM	Core Fixed Cost Adjustment Mechanism
7	D.	Decision
8	DA	Direct Access
9	DA CRS	Direct Access Cost Responsibility Surcharge
10	El Paso	El Paso Natural Gas Company, its parent corporation and its affiliates
11	Electric Classes	Representatives of certain classes of electric utility ratepayers
12	EPSMA	El Paso Settlement Memorandum Account
12	ERRA	Energy Resource Recovery Account
13	FERC	Federal Energy Regulatory Commission
14	MSA	Master Settlement Agreement
15	PG&E	Pacific Gas and Electric Company
16	PGA	Purchased Gas Account
17	SCE	Southern California Edison Company
18	SDG&E	San Diego Gas and Electric Company
19	SoCalGas	Southern California Gas Company
20	Southwest	Southwest Gas Corporation
21	SPURR/ABAG POWER	School Project for Utility Rate Reduction and the Association of Bay Area Governments Publicly Owned Energy Resources
22	TCBA	Transition Cost Balancing Account
23	TURN	The Utility Reform Network

**(END OF ATTACHMENT B)**